

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

BARRY FERGUSON,

Petitioner,

v.

CIVIL ACTION NO. 5:09-cv-00300

D. BERKEBILE,

Respondent.

**MEMORANDUM OPINION AND ORDER
ADOPTING PROPOSED FINDINGS AND RECOMMENDATION**

The Court has reviewed Petitioner's Application Under 28 U.S.C. § 2241 For Writ of Habeas Corpus By a Person in State or Federal Custody (Document 2). By Order (Document 4) entered on March 25, 2009, this action was referred to the Honorable R. Clarke VanDervort, United States Magistrate Judge, for submission to this Court of proposed findings of fact and recommendation for disposition, pursuant to 28 U.S.C. § 636(b)(1)(B). On February 1, 2012, the Magistrate Judge submitted Proposed Findings and Recommendation ("PF&R") (Document 8), wherein it is recommended that this Court deny Petitioner's Application to Proceed in Forma Pauperis (Document 1), dismiss Petitioner's petition as moot and remove this matter from the Court's docket.

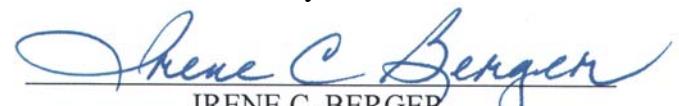
The Court is not required to review, under a de novo or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the findings or recommendation to which no objections are addressed. *Thomas v. Arn*, 474 U.S. 140, 150 (1985). Failure to file timely objections constitutes a waiver of de novo review and the Petitioner's right to appeal this

Court's Order. 28 U.S.C. § 636(b)(1); *see also Snyder v. Ridenour*, 889 F.2d 1363, 1366 (4th Cir.1989); *United States v. Schronce*, 727 F.2d 91, 94 (4th Cir.1984). In addition, this Court need not conduct a de novo review when a party "makes general and conclusory objections that do not direct the Court to a specific error in the magistrate's proposed findings and recommendations." *Orpiano v. Johnson*, 687 F.2d 44, 47 (4th Cir.1982). Objections to the PF&R in this case were due on February 21, 2012. To date, no party has filed any objections. As noted in the PF&R, Petitioner appears to have been released from custody on December 30, 2009.

Accordingly, the Court **ADOPTS** and incorporates herein the findings and recommendation of the Magistrate Judge as contained in the Proposed Findings and Recommendation, and **ORDERS** that Petitioner's Application Under 28 U.S.C. § 2241 For Writ of Habeas Corpus By a Person in State or Federal Custody (Document 2) be **DISMISSED**. The Court further **ORDERS** Petitioner's Application to Proceed *in Forma Pauperis* (Document 1) be **DENIED**. Finally, the Court **ORDERS** that this matter be removed from its docket.

The Court **DIRECTS** the Clerk to send a copy of this Order to counsel of record and any unrepresented party.

ENTER: February 22, 2012


IRENE C. BERGER
UNITED STATES DISTRICT JUDGE
SOUTHERN DISTRICT OF WEST VIRGINIA